

No. 9(1)-81-8Lab/6378.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Hindustan Wires Ltd., Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 46 of 1979

between

SHRI AJAY KUMAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S  
HINDUSTAN WIRES LTD., FARIDABAD

Present.

Shri R. N. Roy, for the workman.

Shri K. P. Agrawal, for the management.

#### AWARD

By order No. 11/1/3951, dated 25th January, 1979, the Governor of Haryana referred the following dispute between the management of M/s Hindustan Wires Ltd., Faridabad and its workman Shri Ajay Kumar Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (3) of sub-section (1) of section 11 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ajay Kumar Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 22nd May, 1979 and 31st March, 1980:—

1. Whether the reference or order is defective and untenable as to the provision of the law?
2. Whether the dispute is not an Industrial Dispute?
3. Whether the Mercantile Association has *locus standi* to raise the demands?
4. Whether the Government did not apply their mind before referring the dispute?
5. Whether the appointments of the workmen was temporary? If so, to what effect?
6. Whether the termination of the workman was justified and in order?
7. Whether the workman is gainfully employed since when and to what effect?

And the case was fixed for the evidence of the management, who examined Shri M. Kundu Manager as MW-1, Shri Ramesh Chander Singh as MW-2 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and Shri R. N. Roy, authorised representative as WW-2 and closed his case. Arguments were heard. I now give my finding issues:—

Issue No. 1:—

This issue was not pressed by the management, therefore, this issue is decided against the management.

Issue No. 2:—

The management raised preliminary objection that the present dispute could not be an industrial dispute in terms of section 2-A or section 2(k) of Industrial Disputes Act. It also took objection in para 5 that the workman did not raise demand individually on his termination of service. The demand notice dated the 21st November, 1978, received with the reference order in signed by Shri R. N. Roy, President, Mercantile Employees Association, with a copy of complaint and power of attorney dated the 15th October, 1978. Reference order speaks that an industrial dispute exists between the workman Shri Ajay Kumar Singh and the management of M/s Hindustan Wires Ltd, Faridabad etc., The workman who appeared as WW-1 stated that when the management terminated his services he made a complaint to the union which was Ex. W-1. In cross-examination he stated that he had become member of the union earlier but signed Ex. W-1 on 10th October, 1978. None from the factory was President or General Secretary of the union. Only one other Shri Maheshwar Singh was member of this union. Although at that time there were about 250 workmen in the factory. Shri R. N. Roy, authorised representative for the workman, stated that he was President of the Mercantile Employees Association which was registered trade union. He raised demand notice Ex. W-2 on the authority of Ex. W-2. He sent it to the management by registered post. In cross-examination he replied that the concerned workman became member of his union of 12th October, 1978. There were only five workmen of the management who were members of his union. He further stated that no resolution was passed in the meeting regarding this workman.

The claim statement is signed and verified by Shri R. N. Roy only and so the rejoinder to the written statement.

The learned representative for the workman argued that the present dispute was an individual dispute as defined in section 2-A of the Industrial Disputes Act and not a collective dispute. He further contended that he was authorised by the workman to raise demand over the management and also to represent the workman before the authorities. There was no need of espousal by the union because

the workman had authorised the President and the General Secretary of the union to proceed in the matter. Power of attorney Ex W-1 is printed form on. Section 2-A of the I.D. Act is as follows:—

“Whether any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of the workmen is a party to the dispute.

This section has dispensed with the support of other workmen or the union in raising an Industrial Dispute where a dispute is regarding termination of the services of an individual workman. In the present case it is admitted fact that the dispute is regarding termination of an individual workman of Shri Ajay Kumar Singh and the learned representative for the workman has admitted in his statement that it was not espoused by the union and further that there were only five workmen from this management members of his union. The workman became member of the union after his termination of his service. Thus the only point for discussion is whether the demand falls within the ambit of section 2-A. Under the Industrial Disputes Act representation of parties is dealt by section 36 which is as under:—

36(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by:—

- (a) Any member of the executive or other office bearer of a registered trade union of which he is a member;
- (b) Any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
- (c) Where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

And rule 36 applicable to the State of Haryana states that authority will be in form F which is as under:—

FORM F  
(See Rule 36)  
(here mention the authority concerned)

Before \_\_\_\_\_  
Reference No. \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ workmen  
employer \_\_\_\_\_  
In the matter of \_\_\_\_\_  
I/we hereby authorise Shri/Sarvshri \_\_\_\_\_ to represent me/us in the above  
matter.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Signature of Person(s)  
nominating the representative(s)

Accepted.  
Signature of representative(s)  
Address.

Address

It is true that the workman has a right to appoint his representative under the Industrial Disputes Act, and rules to represent him before the authorities under the Act but the employer is not an authority under the Act, therefore, a power of attorney must be under the common law of the land i. e. under the Powers of Attorney Act read with Indian Court Fee Act, or the Stamp Act because a vakalatnama of an advocate bear court fee stamp and a general or special power of attorney is on non-judicial stamp paper. The workman in Ex. W-1 authorised the President and the General Secretary of Mercantile Employees Association to take up his claim before the employer, Conciliation Officer, Labour Court, Tribunal, etc. The workman in his statement speaks of making a complaint to the union against his termination. Thus it was the union to take up the matter with the management or the authorities according to him. On my above discussions I do not find any reason to accept the present dispute to be under section 2-A of the Industrial Disputes Act and thereby hold that it is not an industrial dispute.

While answering the reference I give my award that the case of the workman fails on issue No. 2 and there is no need to decide other issues. The workman is not entitled to any relief in this reference.

Dated the 22nd May, 1981.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 516, dated the 24th May, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.